

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:18-cv-146-FDW  
(3:15-cr-73-FDW-DCK-1)**

**JIMMY LEE WILLIAMS,**

**Petitioner,**

**vs.**

**UNITED STATES OF AMERICA,**

**Respondent.**

**ORDER**

**THIS MATTER** comes before the Court on Petitioner's Motion to Hold in Abeyance, (Doc. No. 2), and Motion for Continuation to File Due to Transfer, (Doc. No. 4).

Petitioner filed a *pro se* Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255, on February 18, 2018, raising claims of ineffective assistance of counsel, prosecutorial misconduct, and trial court error. (Doc. No. 1). He failed to address timeliness in his § 2255 petition and the Court ordered him to do so by June 4, 2018. (Doc. No. 3).

Petitioner has moved to stay these proceedings pending an anticipated transfer to another correctional institution, (Doc. No. 2), and for a 90-day extension of time to file an Amended § 2255 Motion to Vacate, (Doc. No. 4).

Petitioner's Motion to Hold in Abeyance is denied as moot because Petitioner has filed a Notice of Change of Address indicating that he has arrived at his new institution. See (Doc. No. 5). Petitioner's motion for a 90-day extension of time to file an Amended § 2255 Motion to Vacate is denied. However, he is granted leave to file an Amended § 2255 Motion to Vacate within **20 days** of this Order, subject to all timeliness and procedural requirements. See generally 28 U.S.C.

§ 2255(f); Mayle v. Felix, 545 U.S. 644 (2005) (discussing relation back). Petitioner must address the statute of limitations in his Amended § 2255 Motion to Vacate or his petition will be dismissed with prejudice as time-barred. See (Doc. No. 3).

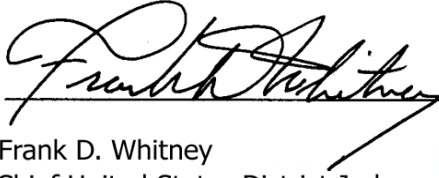
Although Petitioner is appearing *pro se*, he is reminded that he required to comply with all applicable rules including the Local Rules of the United States District Court for the Western District of North Carolina, the Federal Rules of Civil Procedure, and the Rules Governing Section 2255 Proceedings. See Rule 12, Rules Governing Section 2255 Proceedings for the United States District Courts (“The Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules.”). Rule 8(a) of the Federal Rules of Civil Procedure requires pleadings to contain a “short and plain statement of the claim showing that the pleader is entitled to relief...” Fed. R. Civ. P. 8(a)(2); Rule 2(c), Rules Governing Section 2255 Proceedings for the United States District Courts (the § 2255 motion to vacate must “substantially follow ... the form appended to these rules.”); see generally LCvR 1.7(d) (the page limit for any civil brief is 25-pages with a 12-point font size, double-spaced). The general rule is that “an amended pleading supersedes the original pleading, rendering the original pleading of no effect. Thus, if an amended [pleading] omits claims raised in the original [pleading], the [party] has waived those omitted claims.” Young v. City of Mount Ranier, 238 F.3d 567, 573 (4<sup>th</sup> Cir. 2001). Petitioner must include the instant case number on the Amended Motion to Vacate so that it is filed in this case.

Petitioner shall have twenty **(20) days** in which to file a superseding Amended § 2255 Motion to Vacate in accordance with this Order. If he fails to do so, the original § 2255 Motion to Vacate, (Doc. No. 1), will be dismissed with prejudice as time-barred.

**IT IS, THEREFORE, ORDERED** that:

1. Petitioner's Motion to Hold in Abeyance, (Doc. No. 2), is **DENIED** as moot.
2. Petitioner's Motion for Continuation to File Due to Transfer, (Doc. No. 4), is **GRANTED** in part and **DENIED** in part as set forth in this Order.
3. Petitioner shall have twenty **(20) days** in which to file an Amended § 2255 Motion to Vacate in accordance with this Order. If Petitioner fails to file an Amend Motion to Vacate within the time limit set by the Court, the § 2255 Motion to Vacate, (Doc. No. 1), and will be dismissed with prejudice as time-barred.
4. The Clerk is directed to mail Petitioner a new § 2255 Motion to Vacate form.

Signed: June 6, 2018

  
Frank D. Whitney  
Chief United States District Judge

